

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 2:10-1087

\$88,029.08, MORE OR LESS,
IN UNITED STATES CURRENCY,

Defendant.

(Katherine Anne Hoover, M.D. and
John F. Tomasic;
No pending federal criminal charges)

UNITED STATES RESPONSE TO
"MOTION TO STRIKE UNITED STATES RESPONSE
TO MOTION TO SET ASIDE DEFAULT JUDGMENT"

Comes now the United States of America, by counsel, Betty A. Pullin, Assistant United States Attorney for the Southern District of West Virginia, and responds to the motion to strike (Docket #50) as follows:

1. The United States relies on its response filed on February 28, 2011 (Docket #48), and the exhibits referenced therein, to support its position that neither Ms. Hoover nor Mr. Tomasic have a meritorious defense to the forfeiture in this case and the United States will be prejudiced if the defaults are set aside. Ms. Hoover and Mr. Tomasic have repeatedly alleged throughout the documents they have filed in this case that the seized money was proceeds from the lawsuit settlement of the estate

of their son, Michael Tomasic. The bank records and John Tomasic's recent letter to his daughter Kathy Busse clearly establish that the lawsuit settlement was distributed either through passing it along to family members or, as the bank records show, using some of it to pay down on a Mercedes Benz, to pay property taxes and for home improvements, and by transferring the balance into another estate. Any supposed correspondence sent by Tomasic's other daughter, Marianne, over a year ago, complaining to her father about his distribution of Michael's estate, would have been AFTER the settlement check was deposited into the Wesbanco account and AFTER Hoover and Tomasic spent or otherwise transferred the money out of the account. What Hoover and Tomasic did with the balance of \$150,020 that they transferred out of the Wesbanco account on November 9, 2009, and into the Estate of William Hoover is unknown to the United States, however, it is clear from the bank records that the monies from the settlement check are no longer in the account. The bank records speak for themselves. (See, Exhibit A to Docket #37).

2. The "second in Rem" that Ms. Hoover and Mr. Tomasic are referring to (Docket #22) was the Clerk's reissuance of the Warrant of Arrest in Rem on November 23, 2010, at the request of the United States, so that the United States could serve Diane Shafer with notice of this forfeiture proceeding. The United States was informed by the FBI that Ms. Shafer had attempted to file a claim

with the FBI for \$2,902.00 of the defendant currency on or about November 9, 2010. Ms. Shafer's claim was filed in the administrative forfeiture proceeding, however, that proceeding had already ceased and the seizure had been referred to the United States for filing this court action, as a result of Katherine Hoover filing her claim with the FBI. The re-issuance of the Warrant of Arrest on November 23, 2010 (Docket #22) was to serve Diane Shafer (Docket #21), and had absolutely nothing to do with Katherine Hoover or John Tomasic. The United States had no obligation to re-serve them with the second Warrant (Docket #22).

WHEREFORE, the United States respectfully requests that this motion to strike be denied, and renews its request that the motion to set aside the default also be denied for the reasons set forth in the United States response (Docket #48) filed on February 28, 2011.

Respectfully submitted,

UNITED STATES OF AMERICA
By Counsel

R. BOOTH GOODWIN II
United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that the "UNITED STATES RESPONSE TO MOTION TO STRIKE UNITED STATES RESPONSE TO 'MOTION TO SET ASIDE DEFAULT JUDGMENT'" was electronically filed with the Court and served on the following, on this 28th day of March, 2011:

Katherine Anne Hoover, M.D. and
John F. Tomasic
c/o Norman Gay, M.D.
247 West Bay Street
Nassau, N.P. Bahamas
(via Federal Express International)

By: s/Betty A. Pullin
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